

### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Kent J. Sieffert (Reg. No.: 41,312) on May 22, 2009.

2. **In the claims:**

Please replace/amend all claims as disclosed below:

Claim 1 (Currently Amended) A method to dynamically establish a performance community of distributed network devices, the method comprising:  
receiving a routing communication in accordance with a routing protocol, wherein the routing communication includes an identifier associated with a network device that sent the routing communication and a uniquely defined routing protocol community value  
an indicator that indicates the network device that sent the routing communication is capable of responding to performance probes used to monitor performance of a network,  
wherein the routing protocol comprises one of Border Gateway Protocol (BGP), Open Shortest Path First (OSPF), Intermediate System – Intermediate System (ISIS), and Routing Information Protocol (RIP);  
updating performance community information to incorporate the network device that sent the routing communication into the performance community; and

sending a performance probe to the network device identified by the identifier to collect network performance statistics.

Claim 2 (Previously Presented) The method of claim 1, wherein receiving the routing communication includes receiving a plurality of routing communications that each identify respective network devices that are capable of responding to performance probes and further comprising dynamically generating data to identify the network devices that are capable of responding to performance probes in response to the routing communications.

Claim 3 (Previously Presented) The method of claim 1, wherein the routing communication further includes routing information describing a topology of the network.

Claim 4 (Previously Presented) The method of claim 1, further comprising: generating an outbound routing communication in accordance with the routing protocol; and sending the outbound routing communication to the network device associated with the identifier via the routing protocol, wherein the outbound routing communication identifies at least the sending network device as a supporter of performance monitoring.

Claim 5 (Original) The method of claim 1, further comprising generating the performance probe to include a timestamp that indicates a time at which the probe was sent.

Claim 6 (Original) The method of claim 1, wherein sending the performance probe comprises sending a plurality of performance probes.

Claim 7 (Original) The method of claim 6, wherein each of the performance probes is addressed to a common destination network device.

Claim 8 (Original) The method of claim 6, wherein each of the performance probes is associated with the same quality of service level.

Claim 9 (Original) The method of claim 6, wherein sending the plurality of performance probes comprises sending the plurality of performance probes at a periodic rate over an interval of time.

Claim 10 (Original) The method of claim 6, wherein sending the plurality of performance probes comprises:

    sending a first performance probe having a first quality of service level to the network device; and

    sending a second performance probe having a second quality of service level to the network device.

Claim 11 (Previously Presented) The method of claim 1, further comprising:  
    receiving a response to the performance probe from the network device;

adding a timestamp to the response to indicate the time of reception of the response; and  
storing information contained in the response.

Claim 12 (Original)      The method of claim 11, further comprising forwarding the stored information to a centralized computing device for computing comprehensive network performance statistics.

Claim 13 (Previously Presented)    The method of claim 11, further comprising:  
computing network performance statistics from the information contained in the response; and  
forwarding the network performance statistic to a centralized device for computing comprehensive network performance statistics.

Claim 14 (Original)      The method of claim 1, further comprising:  
receiving an inbound performance probe from the network device; and  
sending a response to the inbound performance probe to the network device, wherein the response to the performance probe includes the received performance probe and a timestamp indicating the time of reception of the inbound performance probe.

Claim 15 (Original)      The method of claim 1, wherein the network performance statistics includes at least one of network delay, network jitter, network throughput, network availability and network packet loss.

Claim 16 (Cancelled).

Claim 17 (Currently Amended) A network device comprising:

a processor;

a first data structure to store routing information that describes a topology of a network;

a second data structure to store performance community information that identifies one or more network devices that are capable of responding to performance probes used to monitor the network; and

a routing communication manager executing on the processor, wherein the routing communication manager that receives a routing communication that identifies at least one route within a network and a routing protocol community value an indicator that indicates that a network device that sent the routing communication is capable of responding to performance probes used to monitor the network, updates the routing information of the first data structure to include the route identified in the routing communication and updates the performance community information of the second data structure to include the network device that sent the routing communication as one of the network devices capable of responding to performance probes,

wherein the routing protocol comprises one of Border Gateway Protocol (BGP), Open Shortest Path First (OSPF), Intermediate System – Intermediate System (ISIS), and Routing Information Protocol (RIP).

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Claim 18 (Previously Presented) The network device of claim 17, wherein the routing communication manager of the network device generates an outbound routing communication in accordance with the routing protocol, and sends the outbound routing communication to at least one of the one or more network devices identified in the second data structure via a routing communication protocol, wherein the outbound routing communication identifies the network device as capable of responding to performance probes.

Claim 19 (Currently Amended) The network device of claim 18, wherein the outbound routing communication includes an identifier associated with the network device and a routing protocol community value ~~an indicator~~ that indicates the network device is capable of responding to performance probes.

Claim 20 (Previously Presented) The network device of claim 17, further comprising a performance monitoring manager that collects network performance statistics by sending one or more performance probes to at least a portion of the one or more network devices identified in the second data structure.

Claim 21 (Previously Presented) The network device of claim 20, wherein the performance probes include a timestamp indicating a time at which the performance probe is sent.

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Claim 22 (Previously Presented) The network device of claim 20, wherein the performance monitoring manager sends a plurality of performance probes to one of the network devices identified in second data structure.

Claim 23 (Previously Presented) The network device of claim 22, wherein each of the plurality of performance probes is associated with a same quality of service level.

Claim 24 (Previously Presented) The network device of claim 22, wherein the performance monitoring manager sends each of the plurality of performance probes at a periodic rate over an interval of time.

Claim 25 (Previously Presented) The network device of claim 20, wherein the performance monitoring manager sends a first performance probe associated with a first quality of service level to a first one of the one or more network devices identified in the second data structure and a second performance probe associated with a second quality of service level to the first one of the network devices.

Claim 26 (Previously Presented) The network device of claim 20, wherein the performance monitoring manager receives a response to at least one of the performance probes, adds a timestamp to the response to indicate a time of reception of the response, and stores information contained in the response.

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Claim 27 (Original)      The network device of claim 26, wherein the performance monitoring manager forwards the stored information to a centralized computing device for computing comprehensive network performance statistics.

Claim 28 (Original)      The network device of claim 26, wherein the performance monitoring manager computes the network performance statistics from the information contained in the response and forwards the network performance statistics to a centralized device for computing comprehensive network performance statistics.

Claim 29 (Previously Presented)    The network device of claim 20, wherein the performance monitoring manager receives an inbound performance probe from one of the network devices identified in the second data structure and sends a response to the inbound performance probe, wherein the response includes the inbound performance probe and a timestamp indicating the time of reception of the inbound performance probe.

Claim 30 (Original)      The network device of claim 20, further comprising a processor and wherein at least one of the routing communication manager and the performance monitoring manager comprises a software process executing on the processor.

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Claim 31 (Original)      The network device of claim 20, wherein at least one of the routing communication manager and the performance monitoring manager are executed in hardware.

Claim 32 (Original)      The network device of claim 20, further comprising a dedicated service card that implements the performance monitoring manager.

Claim 33 (Original)      The network device of claim 17, wherein the network performance statistics include at least one of network delay, network jitter, network throughput, network availability and network packet loss.

Claim 34 (Cancelled).

Claim 35 (Currently Amended)    A system comprising:  
at least one network device that receives routing communications in accordance with a routing protocol, wherein at least a portion of the routing communications include identifiers associated with network devices that sent the routing communications and routing protocol community values indicators that indicate that the network device ~~associated with the indicators~~ are capable of responding to performance probes used to monitor performance of a network, wherein the network device updates performance community information to incorporate the network devices that sent the routing communication into a performance community and sends performance probes to the network devices associated with the identifiers to collect network performance information, wherein the routing protocol comprises one of Border Gateway Protocol

(BGP), Open Shortest Path First (OSPF), Intermediate System – Intermediate System (ISIS), and Routing Information Protocol (RIP); and

a statistical computing device that aggregates performance information from the network devices and computes collective network performance information for the network based on the aggregated performance information.

Claim 36 (Original)      The system of claim 35, wherein the statistical computing device displays the collective network performance statistics to a user.

Claim 37 (Original)      The system of claim 36, wherein the statistical computing device displays the network performance statistics to the user in real-time.

Claims 38-39 (Canceled).

Claim 40 (Previously Presented)    The system of claim 35, wherein each of the at least one network device collects performance information by sending performance probes to at least a portion of the network devices associated with the identifiers, receiving responses to the performance probes, and adding timestamps to the responses to indicate the time of reception of the responses.

Claim 41 (Currently Amended)    A network device comprising:  
a processor;

a routing communication manager executing on the processor that receives routing communications in accordance with a routing protocol, wherein at least a portion of the routing communications include identifiers associated with the network devices that sent the routing communications and routing protocol community values indicators that indicate that the network devices ~~associated with the indicators~~ are capable of responding to performance probes used to monitor performance of a network, wherein the routing communication manager updates performance community information to establish a performance community that includes the network devices that sent the routing communications, and wherein the routing protocol comprises one of Border Gateway Protocol (BGP), Open Shortest Path First (OSPF), Intermediate System – Intermediate System (ISIS), and Routing Information Protocol (RIP); and a performance monitoring service card that manages performance sessions with the network devices associated with the identifiers by sending performance probes to the network devices to collect network performance statistics.

Claim 42 (Previously Presented) The network device of claim 41, wherein the performance monitoring service card generates performance probes and sends the performance probes to the network devices associated with the identifiers to collect network performance statistics, wherein each of the performance probes include a timestamp indicating a time at which the respective one of the performance probes was sent.

Claim 43 (Previously Presented) The network device of claim 41, wherein the performance monitoring service card receives a response to at least one of the performance probes, adds a timestamp to the response to indicate the time of reception of the response, and stores information contained in the response.

Claim 44 (Previously Presented) The network device of claim 41, wherein the performance monitoring service card receives an inbound performance probe from one of the network devices associated with a respective one of the identifiers and sends a response to the inbound performance probe, wherein the response to the inbound performance probe includes the inbound performance probe and a timestamp indicating the time of reception of the inbound performance probe.

Claim 45 (Cancelled).

Claim 46 (Currently Amended) A computer-readable storage medium comprising instructions that cause a processor to:

receive a routing communication in accordance with a routing protocol, wherein the routing communication includes a routing protocol community value ~~an identifier~~ associated with a network device that sent the routing communication and an indicator that indicates the network device that sent the routing communication is capable of responding to performance probes used to monitor performance of a network, wherein the routing protocol comprises one of Border Gateway Protocol (BGP), Open Shortest

Path First (OSPF), Intermediate System – Intermediate System (ISIS), and Routing

Information Protocol (RIP);

in response to the routing communication, incorporate the network device that sent  
the routing communication into a performance community of distributed network devices  
that are capable of responding to performance probes used to monitor performance of  
the network; and

send a performance probe to the network device identified by the identifier to  
collect network performance statistics.

Claim 47 (Currently Amended) The computer-readable storage medium of claim 46,  
further comprising instruction that cause the processor to:

generate an outbound routing communication in accordance with the routing  
protocol; and

send the outbound routing communication to the network device associated with the  
identifier via the routing protocol, wherein the outbound routing communication  
identifies at least the sending network device as capable of responding to performance  
probes.

Claim 48 (Currently Amended) The computer-readable storage medium of claim 46,  
further comprising instructions that cause the processor to generate the performance  
probe to include a timestamp that indicates a time at which the probe was sent.

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Claim 49 (Currently Amended) The computer-readable storage medium of claim 46,

further comprising instruction that cause the processor to:

receive a response to the performance probe from the network device to which  
the performance probe was sent;

add timestamp to the response to indicate the time of reception of the response;

and

store information contained in the response.

Claim 50 (Currently Amended) The computer-readable storage medium of claim 49,

further comprising instruction that cause the processor to further comprising forward the  
stored information to a centralized computing device for computing comprehensive  
network performance statistics.

Claim 51 (Currently Amended) The computer-readable storage medium of claim 46,

further comprising instruction that cause the processor to:

receive an inbound performance probe from the network device; and

send a response to the inbound performance probe to the network device, wherein  
the response to the performance probe includes the received performance probe and a  
timestamp indicating the time of reception of the inbound performance probe.

Claim 52 (Cancelled).

Claim 53 (Currently Amended)    The method of claim 1, wherein the routing protocol community value comprises a receiving a routing communication comprises receiving a routing communication in accordance with a routing protocol that includes a uniquely defined BGP community attribute that indicates the network device that sent the routing communication is capable of responding to performance probes.

***Allowable Subject Matter***

3.    Claim 1-15, 17-33, 35-37, 40-44, 46-51 and 53 (renumbered 1-47) are allowed.

This communication warrants no examiner's reason for allowance, as the prosecution and applicant's reply make evident reasons for allowance [see applicant's persuasive arguments/remarks filed on 02/04/2009 further with the examiner's claim amendment as reflected above (see also Interview Summary attached within)], satisfying the "record as a whole" as required by rule 37 CFR 1.104(e). In this case, the substance of applicant's remark and the amendment herein made to the claims clarifying the claimed invention indicate the reasons claims are patentable over the prior art of record. Reason for allowance is in all probability evident from the record. Thus, no examiner's statement of reasons for allowance is necessary (see M.P.E.P 1302.14).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yemane Mesfin whose telephone number is (571)272-3927. The examiner can normally be reached on 9:30 AM -7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on 572-272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Yemane Mesfin/  
Primary Examiner, Art Unit 2444